

A recently published Supreme Court case (Supreme Court decision dated 29 July 2015) delves deep into the rights of farmland users in Myanmar and challenges while securing the Form-7 land user certificates, especially for thousands of smallholder farmers across the country.

20 February 2017

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# LAND DISPUTES: COURT DECISION CURTAILS RIGHTS OF FARMLAND USERS WITHOUT A FORM-7?

## Background

This case involves a married couple "F" and "G" who owned a farmland in Myanmar, and their children "A", "B", "C" and "D". Typical of a farming family, the farmland, which was their main asset, was left to their daughter D, or in other words, after F and G dies, D would inherit the farmland. However, after F and G passed away, A disagreed with D being the sole owner of the farmland, and decided to contest her ownership as he felt all three siblings should have equal ownership in the farmland.

A filed for an inheritance lawsuit against his three siblings at the Township Court, which ruled in favor of A, after which D filed petitions seeking a revision of this judgment at the District Court and the Regional High Court, both of which confirmed the Township Court's jurisdiction to hear the case.

In his final attempt, D moved to the Supreme Court of Myanmar, which overruled the lower court's judgment, stating the District Court did not have the jurisdiction to hear the case.

Of more importance was the Supreme Court's reference to the absence of Form-7, the farmland work permit certificate required as per the 2012 Farmland Law in Myanmar. The Supreme Court judgment in 2015 gave D complete ownership in the land.

## What was the lower court's judgment and why?

The Township Court, which first heard this case, took two key aspects of the case into consideration (1) whether the disputed

## Highlights of this note

- ▶ Background
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farmland had been registered under the Township Farmland Management Committee as required under the 2012 Farmland Law, and (2) whether the Township Court had the jurisdiction to hear the case. It found that the disputed farmland was an "unregistered" land, meaning its initial owners F and G or its current owner D did not obtain a Form-7 certificate from the Township Farmland Management Committee at the time of purchase or inheritance. In Myanmar, the Form-7 certificate, created with the 2012 Farmland

Law, functions as a farmland work permit certificate and is a mandatory requirement if a party wishes to have the right to farm a particular plot of land.

In its judgment, the Township Court stated it had the jurisdiction to hear the case, after which D filed a petition at the District Court seeking revision of the Township Court's judgment. The District Court confirmed the Township Court's judgment. D filed a petition at the Regional High Court, which, once again, confirmed the lower court's judgment.

**What did the Supreme Court decide and why?**

In its judgment, the Supreme Court highlighted section 9 (c) of the 2012 Farmland Law, which says:

*"disputes arising out of the inheritance of farmland shall be decided upon by the respective court of law in accordance with existing law".*

It is the point of view of this decision that a lower court does not have the jurisdiction to hear a case related to right to work on a farmland, if the farmland is not registered with the township farmland management committee by obtaining a form-7 certificate. It also means that to accept the decision of a Court when it comes to matters related to inheritance and land disputes as mentioned in the 2012 Farmland Law, a party must obtain the Form-7 farmland work permit certificate from the Township Farmland Management Committee.

According to the Supreme Court judgment, lower court's lack of jurisdiction and the absence of Form-7 meant that ownership in the farmland would remain unchanged, and D would continue to be the sole owner of the land, leaving A with no ownership in the disputed farmland.

**What does the 2012 Farmland Law say about the Form-7 certificate? What are the conditions to apply to get it?**

As mentioned above, the Form-7 certificates were created with the 2012 Farmland Law, functioning as a farmland work permit certificate for people with the right to farm a particular plot of land.

Aspects relevant to this case can be

found in three sections of the Farmland Law – section 4, section 7(a) and section 8 under Chapter 2' Right to Work on Farmland'.

To begin with, section 4 of the Farmland Law says:

*"a person who has the permission or right to use farmland must apply for the right to work on farmland to the Township Land Records Department Office, via the relevant Ward or Village Tract Farmland Management Committee".*

**Conditions and Requirements**

Section 7(a) states conditions and requirements to obtain the Form-7 certificate. The Township Farmland Management Committee shall issue the farmland work permit certificate to people or organizations who meet the following conditions. The certificate is issued with the consent of the District Farmland Management Committee after registration fees are paid at the Township Department and the department registers the case. If the applicant is a person, he or she shall be:

- Engaged in agricultural process using land;
- Living in the relevant ward or village tract as a resident
- At least 18 years of age;
- A citizen or associate citizen or naturalized citizen of Myanmar

**Right through inheritance**

In addition to the above-mentioned sections, section 9 of the Farmland Law addresses matters related to farmland inheritance. According to this section, the Township Farmland Management Committee shall issue a permit to work on farmland to

*"a person who receives the right to work on farmland through a purchase or exchange or assignment, a person who receives such right through inheritance or an applicant who applies for the right to work on farmland in accordance with this law after reclaiming cultivable land from vacant, fallow, virgin land because he or she was granted the right to work or use that vacant, fallow, virgin land, after having the applicant pay a registration fee and having the Township Department register the case".*

**Legal Proceeding**

Court	Judgment
Township Court	<ul style="list-style-type: none"> <li>• Says it has the jurisdiction to hear this case, which involves a disputed, unregistered farmland and matters related to inheritance</li> </ul>
District Court	<ul style="list-style-type: none"> <li>• Confirms the Township Court's judgment on having jurisdiction to hear the case</li> </ul>
Regional High Court	<ul style="list-style-type: none"> <li>• Confirms the Regional High Court's judgment</li> </ul>
Supreme Court of Myanmar	<ul style="list-style-type: none"> <li>• The Supreme Court judgment was based on two key aspects of the case: 1) whether the farmland was registered or not, as required under the 2012 Farmland Law, and 2) whether the lower court's had the jurisdiction to give judgment on this case.</li> <li>• Based on section 9 (c) of the 2012 Farmland Law, the Supreme Court concluded that lower court's did not have the jurisdiction to give judgment on the case. Secondly, in the absence of Form-7, the land continues to be under the ownership of D, who inherited the farmland from parents F and G</li> <li>• In short, the Supreme Court overrules the lower court's judgment in favor of D.</li> </ul>



## What is the legal value of farmland right of use without the certificate?

This decision does not reassure the thousands of smallholder farmers who could not obtain, through no fault of their own, a Form-7. The 2012 Farmland Law was introduced with the intention of systematizing land rights in Myanmar, which further led to the introduction of Form-7 land user certificates. Form-7 certificates are expected to bring

clarity on whose claims are recognized under Myanmar law, and they are seen as a tool to help secure farmland, especially for smallholder farmers across Myanmar.

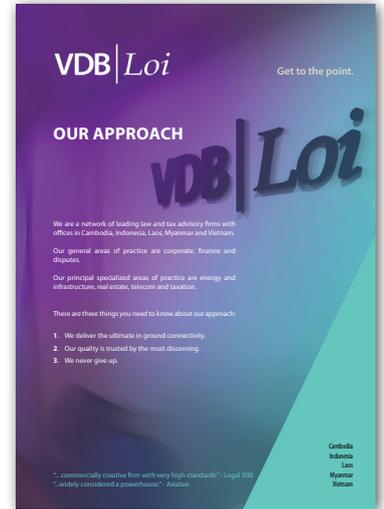
In practice, however, several smallholder farmers in Myanmar continue to work on their farmlands without a Form-7 land use certificate, primarily because the process has been implemented very recently for the first time in this manner. Several conditions and procedural steps are required and it may not be easy for everyone. In addition, disputes over farmland boundaries in rural areas often stall the acquisition of Form-7. Should this Court decision be interpreted in such a way that unless you were able to obtain the Form-7, you have no access to the Courts? Hopefully not.

The Farmland Law could have been interpreted differently by the Court, and that would have resulted in more legal certainty for land right holders. We suspect that the action on which the claim was based was not legally appropriate. This could be remedied in future, similar actions by basing the legal action not only on the Farmland Law.

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## CONTACT



**Edwin Vanderbruggen**  
Senior Partner, VDB-Loi  
[edwin@vdb-loi.com](mailto:edwin@vdb-loi.com)

Edwin is a prominent foreign legal advisor living and working in Myanmar since 2012. He frequently advises the Government on privatizations and transactions in the energy, transport and telecommunications areas. He and our Banking team act for international financial institutions and DFIs, including on their largest ever Myanmar financing, and had a role on virtually every completed project financing transaction. In 2016, Edwin and his team obtained MIC permits for an astounding 25% to 33% of approved FDI in Myanmar, and helped establish a foreign bank. With our firm's Energy team, Edwin worked on 5 out of 7 power projects signed in 2016, and advised 4 of the "supermajors". Supported by an exclusively dedicated telecom team, he helped clients obtain and negotiate Myanmar's first new spectrum and IGW licenses this year.

## YANGON

Level 8, Centrepont Towers  
No. 65 Sule Pagoda Road & Merchant Street, Kyauktada Township  
T: +95 137 1902 / +95 137 1635  
F: +95 124 1238

## DISPUTES TEAM



**Aye Kyaw**  
Team Leader  
[aye.kyaw@vdb-loi.com](mailto:aye.kyaw@vdb-loi.com)

U Aye Kyaw is a Myanmar qualified lawyer and the principal of U Aye Kyaw & Associates VDB Loi, a specialized litigation firm which joined VDB Loi in 2014. He is a former judge, magistrate and law lecturer with nearly 25 year experience in civil and commercial litigation and arbitration. He and his team of litigators have served clients in a broad range of industries with services since 1990.

VDB Loi's Disputes team comprises Myanmar qualified trial lawyers, litigators and foreign arbitration specialists (resident in Myanmar) who exclusively work on litigation and arbitration matters. We focus on a broad range of commercial disputes, labour cases, construction disputes, insolvency and debt enforcement. In 2016, the disputes team booked a significant win when it was able to secure the release and clear the employee of a foreign state agency from criminal charges in connection with a fatal accident.

## NAY PYI TAW

No. S-204, Tha Pyay Kone Ward,  
Zabu Thiri Township  
T: +95 678 108 091  
F: +95 678 108 092